?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%DATED: 11.07.2018
*CORAM
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
+W.P.(MD)No.10300 of 2007
and
W.M.P.(MD)Nos.2 and 3 of 2007

#1.K.Kanakaraj

2.A.Panchangam

3.K.Sekar
... Petitioners

~Vs~

$1.The Government of Tamil Nadu
rep. by its
Secretary, Revenue Department,
Fort St.George, Chennai~600 009.

2.The Special Commissioner and
Commissioner for Revenue Administration,
Chepauk, Chennai~600 005.

3.The District Collector,
Theni District.

4.The Sub Collector,
Periyakulam, Theni District.

5.The Tahsildar,
Andipatti Taluk,
Theni District.

6.K.Murugesan

7.K.Gurusamy

8.M.Bojarajan
... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the fifth respondent herein in his proceeding R.O.C.No.2182/07/B2 dated 22.10.07 and Na.Ka.No.2182/07/B2 dated 01.11.2007 and quash the same and consequently, direct the respondents to appoint the petitioners in the places of the 6th to 8th respondents or in the vacant places in Andipatti Taluk, Theni District.

!For Petitioners : Mr.K.Raja
^For R1 to R5 : Mr.M.Murugan
Government Advocate
:ORDER
The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records of the fifth respondent herein in his proceeding R.O.C.No.2182/07/B2 dated 22.10.07 and Na.Ka.No.2182/07/B2 dated 01.11.2007 and quash the same and consequently, direct the respondents to appoint the petitioners in the places of the 6th to 8th respondents or in the vacant places in Andipatti Taluk, Theni District.

2.Heard Mr.K.Raja, learned counsel appearing for the petitioner and Mr.M.Murugan, learned Government Advocate appearing for the respondents 1 to 5.

3.Since no adverse order is going to be passed against the private respondents whether notices have been served or not is immaterial.

4.The short facts which are required to be noticed for the disposal of the writ petition are as follows:~
The writ petitioners were temporarily appointed as Village Assistant some time in 1984. After having worked for 9 years with intermittent break, they have approached the Tamil Nadu Administrative Tribunal seeking absorption by filing O.A.Nos.4126 to 4128 of 1993. The Tamil Nadu Administrative Tribunal, by order dated 22.02.1994, disposed of the said O.As by giving an observation that the prolonged appointment for nine years caused by the suspension of the regular incumbents and the fact that the applicants had become over aged would merit special consideration. If and when regular appointment is made in the village, the applicants should be considered in relaxation of age, taking into account their performance while working in a temporary capacity over a long period. With the strength of the said order, the petitioners had made request to the official respondents to permanently appoint them as Village Assistant at Mamalai Revenue Village where all the three petitioners had been initially engaged as Village Assistant between 1984 to 1993. Since the said request was not considered, the petitioners had approached this Court by filing a writ petition in W.P.(MD)No.19136 of 2007.

5.In the said writ petition, this Court while disposing of the same, by order dated 30.05.2007, gave a direction to the Tahsildar, Andipatti Taluk, the fifth respondent herein to consider the petitioners representation, dated 04.05.2007, on its own merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of the order.

6.While that being so, since the official respondents moved to make some appointments as Village Assistant in the same Taluk i.e., Andipatti Taluk, where the petitioners temporarily worked for some time, they issued a contempt notice against the official respondents stating that in spite of the order passed by the Tamil Nadu Administrative Tribunal and in spite of the direction given by this Court in the said writ petition, directing the official respondents to consider the request of the petitioner, without taking the petitioners for appointment to the post of Village Assistant, they

proceeded to make fresh appointment.
7.In response to the said notice on behalf of the petitioners, the fifth respondent vide his proceedings in R.O.C.No.2182/07/B2, dated 22/10/2007, has given a reply stating that five posts of Village Assistant is going to be filled up in various Village namely, Kothappatti, Kathimarasingapuram, Palayakottai, Theppampatti and Kanavaipatti. As per the rule which was involved on earlier occasion that the person who belongs to the same village alone shall be considered for the post of Village Assistant. Since the petitioner belongs to Megamalai Revenue Village, where there was no vacancy and there was no proposal to appoint at Megamalai Village, the request of the petitioners to appoint them as Village Assistant in the other villages referred to above, could not be possible for compliance and therefore, the petitioners were advised to wait till vacancy arises at the Megamalai Revenue Village where the petitioners had been temporarily working for some time.

8.Subsequently, by order dated 01.11.2007, the fifth respondent appointed the private respondents and others in the aforesaid villages as Village Assistant. Challenging the communication, dated 22.10.2007 as well as the order of appointment, dated 01.11.2007 giving appointment to the private respondents as Village Assistant issued by the fifth respondent, the petitioners filed this writ petition.

9.I have heard Mr.K.Raja, learned counsel appearing for the petitioners who would submit that, the petitioners had been working for nine years, of~ course on temporary basis and they become over age. That aspect was also considered by the Tamil Nadu Administrative Tribunal in the judgment referred to above and when a direction was given by the Tribunal to the effect that whenever vacancy arose in that village, the petitioners shall be considered for appointment by giving preference and by giving age relaxation to the petitioners, they had not been considered by the respondents while vacancy arose in the Taluk. Therefore, challenging the appointment made to the third party instead of the petitioners, the petitioners have rightly challenged the said orders which are impugned herein.

10.Per contra, Mr.M.Murugan, learned Government Advocate appearing for the official respondents would submit that the petitioners had been directed to be given preference when the vacancy arose in the same village, where they are working. Since no appointment had been made to the Megamalai Village and such appointments had been made in some other villages in the same Taluk, where the petitioners cannot be appointed in view of the rule that the person who belongs to the same village alone shall be considered for the post of Village Assistant. Therefore, the said order appointing the private respondents in other villages cannot be questioned by the petitioners which cannot be sustained and hence, the writ petition is liable to be dismissed.

11.I have considered the submissions made by the learned counsel appearing for both sides and also perused the materials placed before this Court.
12.According to the petitioners, the right accrued on the petitioners was on the basis of the order passed by the Tamil Nadu Administrative

Tribunal in O.A.Nos.4126 to 4128 of 1993, dated 22.02.1994. In the said order, the Tribunal has held as follows:~

?In this case, the prolonged appointment for nine years caused by the suspension of the regular incumbents and the fact that the applicants have become over aged would merit special consideration. If and when regular appointment is made in the village, the applicants should be considered in relaxation of age, taking into account their performance while working in a temporary capacity over a long period. ?

13.No doubt, the Tribunal had made an observation and a direction that in view of the experience gained by the petitioners and since they become over aged, their cases shall be considered by giving age relaxation if and when regular appointment is made in the village. The word mentioned in the Tribunal-s order denotes, only the village where the petitioners had been working temporarily. The village where the petitioners had been working temporarily is Megamalai Revenue Village and if in that village any vacancy arose to fill up the post of Village Assistant, certainly, the petitioners should have been given preferential treatment by giving age relaxation for appointment. This position has in fact been reiterated by the impugned proceedings of the fifth respondent dated 22.10.2007, which reads thus:~

?I therefore request you to advice your clients to patiently wait the vacancies arise in Megamalai Revenue Village in while they worked previously. I am also inform you that, in not complying with the request of your clients, neither the Hon-ble Tamilnadu Tribunal-s orders nor the Hon-ble High Court orders have been infringed or disobeyed and the question of contempt does not arise.?

14.Since the vacancy arose in some other villages namely, Kothappatti, Kathimarasingapuram, Palayakottai, Theppampatti and Kanavaipatti, the fifth respondent had appointed eligible candidates in those villages as Village Assistant through the impugned order, dated 01.11.2007. It makes abundantly clear that through the impugned order, no appointment of Village Assistant had been made by the fifth respondent in the Megamalai Revenue Village where the petitioners had been temporarily working for some time. Therefore, the petitioner-s preferential consideration, would not be made applicable to other villages as the petitioners can claim such right of preferential consideration only, when vacancy arose on permanent basis at the very same Village, namely, Megamalai Revenue Village and since no vacancy arose and no person was appointed as Village Assistant to the Megamalai Revenue Village through the impugned order, the petitioners cannot have any grievance over the said impugned orders appointing the private respondents as Village Assistants in villages referred to supra.

15.After filing the Writ Petition in 2007, all these years, the writ petition is pending for hearing and whether any subsequent vacancy arose in the said Megamalai Revenue Village, where the petitioners case was not considered, has not been reported before this Court by the petitioners. In the absence of any such development, this Court cannot construe that the order passed by the Tribunal has been violated and in violation of the same, the third parties were appointed in the village.

16.In such view of the matter, this Court has no hesitation to hold

that the impugned orders cannot be held to be unsustainable and therefore, the writ petition fails. Hence, the writ petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

To
1.The Government of Tamil Nadu rep. by its
Secretary, Revenue Department,
Fort St.George, Chennai~600 009.

2.The Special Commissioner and
Commissioner for Revenue Administration,
Chepauk, Chennai~600 005.

3.The District Collector,
Theni District.

4.The Sub Collector,
Periyakulam, Theni District.

5.The Tahsildar,
Andipatti Taluk,
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